DISTRIBUTED
NOV 27 1979

Supreme Court, U.S.
FILED
NOV 27 1979
MICHAEL RODAK, JR., CLERK

No. 79-389

In the Supreme Court of the United States

OCTOBER TERM, 1979

PAUL STOUT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

STOUT'S SUPPLEMENTAL AND REPLY BRIEF AND APPENDIX IN SUPPORT OF HIS PETITION FOR WRIT OF CERTIORARI PURSUANT TO SUPREME COURT RULE 24

SHELLY WAXMAN & ASSOCIATES
30 W. Washington Street
Suite 1115
Chicago, Illinois 60602
(312) 782-1360
Attorney for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6881

TABLE OF CONTENTS

PAGE

I. Additional Authority Re Known IRS Attempts To Compromise The Federal Judiciary 1

II. Additional Authority Re. IRS Secret Projects To Focus On And Select "Tax Rebels" And Other IRS Abuses 2

III. Additional Authority Re. Improper Prosecutorial Conduct In Criminal Tax Prosecutions 2

IV. Additional Authority Re. Improper Use Of Prior Conduct Evidence 3

V. Additional Authority Re. Improper Use Of IRS Administrative Summonses In Conjunction With Grand Jury Investigations 3

VI. Additional Authority Re. Improper Remarks By Trial Judge 3

VII. Supplemental Argument 4

VIII. Petitioner's Reply To Brief For The United States 7

Conclusion 12

Appendix—

Count I of Indictment AA-1

Seventh Circuit's Docket entries AA-2

AUTHORITIES CITED

Cases

	PAGE
Berger v. United States, 295 U.S. 78 (1935)	2
Cole v. Arkansas, 333 U.S. 196	4
DeJonge v. Oregon, 299 U.S. 353	4
Libertarian Party of Illinois v. Chicago Board of Election Commissioners, Docket No. 78-1575	5
Re Oliver, 333 U.S. 257	4
Sajdak v. U.S.A., Petition for Writ of Certiorari, Docket No. 79-102	8
Sandstrom v. Montana, ... U.S. ....., 61 L.Ed.2d 39 (1979)	6
United States v. Mohel, ... F.2d ..... (Docket No. 79-1019 2d Cir., July 31, 1979)	3
Spies v. United States, 317 U.S. 492 (1943)	4
Stewart v. Illinois, Petition for Writ of Certiorari, Docket No. 78-1293, (Federal Habeas Corpus Petition *pending,* N.D. Ill.)	4
United States v. Arvant, ... F.2d ..... (Docket No. 78-5345, 6th Cir., August 27, 1979)	3
United States v. Bishop, 412 U.S. 346 (1973)	4
United States v. Dolliole, 597 F.2d 102 (7th Cir., 1979) *cert. denied,* 99 S.Ct. 2132	3
United States v. LaSalle National Bank, 437 U.S. 298 (1978)	3
United States v. Murdock, 290 U.S. 389 (1933)	4

	PAGE
United States v. Mohel, ... F.2d ..... (Docket No. 79-1019 2d Cir., July 31, 1979)	3
United States v. Robert Falk, ... F.2d ..... (Docket No. 78-2299 7th Cir., Sept. 11, 1979)	2
United States v. Serubo, Brown and Platcher, ... F.2d ..... (Docket No. 78-2506, 3rd Cir., Aug. 20, 1979)	3
United States v. Snider, 502 F.2d 645 (4th Cir. 1974)	11
United States v. Spain, 536 F.2d 179 (7th Cir., 1976), *cert. denied,* 429 U.S. 833	2
United States v. Trutenko, 490 F.2d 678 (7th Cir. 1973)	2

Other Authorities

Fifth Amendment to United States Constitution	8
GAO Report to the Joint Committee on Taxation #GGD-77-88 (Nov. 21, 1977)	1
Internal Revenue Manual Supplements CR 5G-224, 8(24) G-168, dated March 15, 1979 and 48 G-288 (Rev. 1) September 26, 1979	2
Legislative History of Section 530 of the Revenue Act of 1978, e.g. Congressional Record, August 23, 1978 at S.14128	1
Special Senate Hearings (IRS Administrative Practices and Procedures) before the Subcommittee on the Department of the Treasury, U.S. Postal Service and General Government Appropriations; 94th Congress, Second Session	2
Tax Notes, ABA Journal Vol. 62 at 915 (July, 1976)	1
"The IRS Papers"—*Freedom,* Newspaper of the Church of Scientology (1979)	2

In the
Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-389

PAUL STOUT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

STOUT'S SUPPLEMENTAL AND REPLY BRIEF AND APPENDIX IN SUPPORT OF HIS PETITION FOR WRIT OF CERTIORARI PURSUANT TO SUPREME COURT RULE 24

I.

ADDITIONAL AUTHORITY RE. KNOWN IRS ATTEMPTS TO COMPROMISE THE FEDERAL JUDICIARY

Project Haven (1971-1974).

Special Employment Tax Project—See GAO Report to the Joint Committee on Taxation #GGD-77-88 (Nov. 21, 1977); Tax Notes, ABA Journal Vol. 62 at 915 (July, 1976); and Legislative History of Section 530 of the Revenue Act of 1978, e.g. Congressional Record, August 23, 1978 at S.14128.

Operation Sunshine (1971-1973). House Government Operations Committee, July 8, 1975.

II.

ADDITIONAL AUTHORITY RE. IRS SECRET PROJECTS TO FOCUS ON AND SELECT "TAX REBELS" AND OTHER IRS ABUSES

Project Ace (1979).

Special Senate Hearings (IRS Administrative Practices and Procedures) before the Subcommittee on the Department of the Treasury, U.S. Postal Service and General Government Appropriations; 94th Congress, Second Session.

IRS Publication #1104 (Sept., 1979).

"The IRS Papers"—*Freedom,* Newspaper of the Church of Scientology (1979).

Internal Revenue Manual Supplements CR 5G-224, 8(24) G-168, dated March 15, 1979 and 48 G-288 (Rev. 1) September 26, 1979.

III.

ADDITIONAL AUTHORITY RE. IMPROPER PROSECUTORIAL CONDUCT IN CRIMINAL TAX PROSECUTIONS

U.S. v. *Robert Falk,* ..... F.2d ..... (Docket No. 78-2299 7th Cir., Sept. 11, 1979).

See also:

Berger v. *U.S.,* 295 U.S. 78 (1935).

U.S. v. *Spain,* 536 F.2d 179 (7th Cir., 1976), *cert. denied,* 429 U.S. 833.

U.S. v. *Trutenko,* 490 F.2d 678 (7th Cir., 1973).

IV.

ADDITIONAL AUTHORITY RE. IMPROPER USE OF PRIOR CONDUCT EVIDENCE

U.S. v. *Dolliole,* 597 F.2d 102 (7th Cir., 1979) *cert. denied,* 99 S. Ct. 2132.

U.S. v. *Mohel,* ..... F.2d ..... (Docket No. 79-1019 2d Cir., July 31, 1979).

V.

ADDITIONAL AUTHORITY RE. IMPROPER USE OF IRS ADMINISTRATIVE SUMMONSES IN CONJUNCTION WITH GRAND JURY INVESTIGATIONS

U.S. v. *LaSalle National Bank,* 437 U.S. 298 (1978).

U.S. v. *Serubo, Brown and Platcher,* .....F.2d ..... (Docket No. 78-2506, 3rd Cir., Aug. 20, 1979).

VI.

ADDITIONAL AUTHORITY RE. IMPROPER REMARKS BY TRIAL JUDGE

U.S. v. *Arvant,* .....F.2d ..... (Docket No. 78-5345, 6th Cir., August 27, 1979).

VII.

SUPPLEMENTAL ARGUMENT

Stout was not indicted for; nor was evidence introduced (other than the prosecutor's remarks); nor was an instruction provided *relating to any failure to "pay" or produce "information"* aspect of Section 7203. See, replication of Count I of the indictment, which has the same wording as Counts II and III except for the years involved, provided in the Appendix hereto (AA-1). Convicting someone of uncharged conduct is violative of the *most elemental* due process concepts. *Cole* v. *Arkansas,* 333 U.S. 196; *Re Oliver,* 333 U.S. 257; and *DeJonge* v. *Oregon,* 299 U.S. 353.*

Moreover, we submit, a "failure to pay" or "supply information" case would have required a *mens rea* instruction, which was not given here. It is, arguably, not required to give such an instruction in a failure to file a return case. See, *U.S.* v. *Murdock,* 290 U.S. 389, (1933), *Spies* v. *U.S.,* 317 U.S. 492 (1943) and *U.S.* v. *Bishop,* 412 U.S. 346 (1973).

This Court has done an excellent job with respect to protection of the equality rights of racial Minorities; however, it is time now to do some work on those Freedom

* We submit that the opinion below is grossly incorrect regarding what Stout was indicted and tried for. The oral argument bears this out. It should be noted that the injection of non-indicted matters into trials is an alarmingly growing prosecutorial abuse. Former Chief Judge Luther Swygert is rightly concerned. See e.g., *U.S.* v. *Robert Falk, supra* and *Stewart* v. *Illinois,* Petition for Writ of Certiorari, Docket No. 78-1293, (Federal Habeas Corpus Petition *pending,* N.D. Ill.). The failure of this Court to correct these unfair practices can only lead to more raucous trials in the future. Since trial objections do not work, more stringent methods obviously need to be taken.

Rights which cut across racial, economic and social lines. These Freedom Rights, which Stout invoked in his "selective prosecution" defense, are now in need of protection; namely, Freedom of Speech (tax protest), Freedom of Religion (to join new religions, such as the Universal Life Church, the Libertarian Fellowship and other "Cults") Freedom to Redress Grievances to seek changes in the tax system); Political Freedom (Mr. Stout was a Libertarian Party Candidate for Congress in 1972)* and Freedom of Association.

Concepts of equality have been stretched to the extreme. Frederick Douglas, the great Black Emancipator, recognized the Universality of these Freedom Rights when he stated on August 4, 1857 as follows:

> Those who profess to favor freedom and yet depreciate agitation are men who want crops without plowing up the ground. They want rain without thunder and lightning. They want the ocean without the awful roar of its waters. This struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle. Power concedes nothing without a demand. It never did, and it never will. Find out just what people will submit to and you have found out the exact amount of injustice and wrong which will be imposed upon them; And these will continue until they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress
> . . .

Regarding the *sua sponte* order which filed the *in camera* submission No. 1 (Pet. for Cert, A-11) in the District Court

* The philosophy of the Libertarian Party is well-known for its logical attack on a morally and intellectually bankrupt "system", a "system" which has wrongly treated its philosophy as a threat, rather than as a light where darkness once was. See, Petition for a Writ of Certiorari filed in *Libertarian Party of Illinois* v. *Chicago Board of Election Commissioners,* Docket No. 78-1575.

Clerk's office, it should be clear to this Court that the "President's letter" which was mentioned in the Court of Appeals opinion (Pet. for Cert. A-5) came from there. This letter was never introduced at trial and it was never formally transmitted to the Court of Appeals. The Seventh Circuit's Docket entries, which are replicated in the Appendix (AA-2) indicate that the law clerk ("L.C.") took out "3" volumes of pleadings, although only "2" had been filed. We submit that the "missing" volume must have been the *in camera* envelope.

The "L.C." record removal and the trial court's *sua sponte* order are too close in time to be happenstance. The failure of the District Court to advise both sides to supplement the Record on Appeal, and for the "L.C." of the Court below to have considered the *in camera* material, although not part of the Record on Appeal, is yet another example, albeit the most outrageous, of the many due process violations we have alleged.

We submit that this Court should exercise summary jurisdiction to require the Court below to direct a judge, other than the trial judge, to hold a hearing on this matter; on the timing of the issuance of the IRS administrative summons, vis-a-viz, the Special Grand Jury's targeting of Stout (See, A-6 of Petition for Writ of Certiorari) and on the issue of electronic surveillance. Short of this Court's exercise of plenary jurisdiction, Petitioner will, necessarily, be forced to proceed by "Section 2255" Petition to take up these very, very serious matters.

Lastly, we contend that the objected to instruction that commented about Stout's credibility had the effect of shifting the burden of proof and, thereby, overriding the presumption of innocence. Under recent Court doctrine the instruction also offended due process concepts for this reason. *Sandstrom* v. *Montana*, ... U.S. ....., 61 L. Ed. 2d 39 (1979).

VIII.

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES

(1) *Brief of U.S. at 4, 6, 8* — In all of the instances cited by the U.S., "plain" (Constitutional) error was committed under the standards of *Kottiokos*. The U.S. disagrees with us as to what the Record actually reflects. Under these circumstances, it would be appropriate for the Court to carefully check the Record itself by obtaining it from the Solicitor General.*

Error "piles up." The U.S.' tactic has been to isolate tacitly admitted error. To us, each error is Constitutional and each had a cumulative effect, including at the pretrial stages where much of the "maneuvering" occurred.** All we are asking for is a fair trial. Stout did not receive one. He requested a mistrial which was improperly denied.

(2) *Brief of U.S. at 2-3* — The U.S. tacitly admitted that the Court in its opinion below was in error in referring to "failure to pay" or "supply information" and the Solicitor General stresses that the conviction was for "failure to file" *and/or* "late file." The *confusion continues.*

The tax Returns for the indictment years provided 3 exemptions (as distinguished from the "allowances" on the withholding form) and the IRS could have easily computed the tax owed. Necessarily, the U.S. could not prove the *mens rea* required for a "failure to pay" case. In a

---

* It appears that the Record was transmitted directly to the Solicitor General instead of to the Court, as required by Rule 21.1.

** The U.S. made a "Reciprocal Discovery Motion" in this case, which was granted by the trial court.

"failure to supply information" case, the Fifth Amendment problem would have been more obvious than it was.

Moreover, if it was a "failure to file" case, the U.S. shouldn't have introduced any Returns for the indictment years. If it was a "late" file case, no Returns should have been introduced because of the 5th Amendment assertion, although evidence could have been introduced that whatever was filed was filed in 1977.*

In short, those Returns shouldn't have been introduced—under any circumstances. Only if Stout had introduced them, in which case he would have waived his Rights, could the U.S. have utilized them.

(3) *Brief of U.S. at 2-3* — Stout filed the Returns because he was advised of a potential criminal prosecution (See, Pet. for Cert. App. 27) in May of 1976. The Special Grand Jury was convened in June, 1976 and indicted Stout on September 21, 1977.

(4) *Brief of U.S. at 3* — Petitioner's counsel did object to introduction of the income tax Returns. By stating that a continuing objection to "documents" "other than . . .", clearly counsel was referring to documents, such as "transcripts of account" or "scrip" for those years. Returns are not necessarily "documents."

Moreover, it was plain (Constitutional) error for the U.S. to introduce these Returns. In our opinion, the error "affected the substantial rights of the accused" and was an "affront to the integrity and reputation of judicial proceedings." (Brief of U.S. at p. 4). The sensitivity of this Court, however, in recognition of such a standard is questionable. See, e.g. *Sajdak* v. *U.S.A.*, Petition for Writ of Certiorari, Docket No. 79-102.

---

* There could have been no dispute as to this. That is what the IRS records reflected.

(5) *Brief of U.S. at 4, n.2 and 5* — Although the Solicitor General may not understand it, the trial court and prosecutor knew what Stout meant by "taking the 5th." Stout's lack of such an assertion at the May 3, 1976 meeting was based on his good faith belief that he was not, at that point, in jeopardy of a criminal prosecution. Having been advised that he was incorrect and that he was subject to criminal prosecution, he filed the Returns. Moreover, the damage done by introduction of the Returns had already been done by the time Stout testified.

(6) *Brief of U.S. at 5* — The "arrangement" did not satisfy Stout. He was given no choice with regard to the counsel issue. The Court refused to allow a continuance of the trial, in addition to denying him a lay advocate of his choice.

(7) *Brief of U.S. at 7* — The U.S. misses our point with regard to the simultaneous use of IRS summonses in conjunction with a Grand Jury proceeding. The point is that the IRS cannot be supervised by the Grand Jury if it is "doing its own thing." If a Grand Jury is targeting, everything must be done by them or under their knowledge and supervision. Any other procedure would be a subversion of the Grand Jury process.

(8) *Brief of U.S. at 8* — As to what was actually told the jury, the following are excerpts from Stout's Appendix in the Court below:

* * *

> PROSECUTOR: And Check 787, down at the bottom of Government's Exhibit 30 for identification, that is a check made out to whom, sir?
>
> STOUT: That is a check made out to Penthouse. (Appendix at pp. 123-124)

* * *

How about this check, Check 334, on the Chapel of the Tolerance, made payable to the Daley Defense Fund. Is that in dollars?

* * *

DEFENSE ATTORNEY: Your Honor, I am going to object to further questioning along this line as cumulative. I think Mr. Gilkerson has secured—

PROSECUTOR: At that same time you were writing checks for such things as Penthouse and Oui Magazine and it said on them, "Dollars," didn't it?

DEFENSE ATTORNEY: Your Honor, I am going to object. I will have to ask to go to the sidebar.

THE COURT: All right. Sidebar.

DEFENSE ATTORNEY: Your Honor, I am going to move for a mistrial because I don't think the thousands of checks that the United States Attorney could acquire upon which Mr. Stout paid or ordered the bank to pay dollars to the payee were the type of checks going to the type of magazines that are in everyday knowledge but the kind that may well be suspect.

In short, your Honor, I am having difficulty in articulating it but I think it is obviously prejudicial. I think that type of character insinuation is improper.

* * *

MR. STOUT: I say that they were carefully chosen to give a prejudicial image and were not chosen at random.

* * *

THE COURT: All right. The objection will be overruled. Let us proceed. Let the record show the motion is denied.

* * *

PROSECUTOR: Mr. Stout, how did you fill out, what name did you put on your 1977 return?

DEFENSE ATTORNEY: Objection.

* * *

THE COURT: Why go into this one that was filed in—which purports to be the income tax return for the year 1977?

PROSECUTOR: Your Honor, the document was offered originally for the same purpose as all of the series of returns for the years surrounding on the issue of a wilfulness of Mr. Stout and it is my understanding that was the basis that it is in evidence.

THE COURT: All right. For that reason it will be admitted. It is in evidence.

* * *

PROSECUTOR: Mr. Stout, will you tell us what name you filed your 1977 Form 1040 in or under?

STOUT: My name.

PROSECUTOR: All right. Your Honor, I would like to publish to the jury the first name and line of the 1977 return.

THE COURT: You may.

PROSECUTOR: It says "Reverend Paul R. Stout." The next line is "150 North Main Street, Lombard, Illinois." (Appendix 126-129)

(9) *Brief of U.S. at 10* — There can be no doubt that Stout was exercising Constitutional Rights. He was not required to "prove" that the government failed to prosecute persons it knew had violated the law, although that was done. Albert Jenner was named as a specific example. All that was required to mandate a selective prosecution hearing with pre-hearing discovery was that Stout make a showing. This was done.

(10) *Brief of U.S. at 10, n.8* — The Solicitor General, by not discussing the later *Snider* case we cited (which distinguishes *Malinowski*) at footnote 8 of his Brief, defaulted on his ethical obligations to this Court. As we have stated, Stout's dramatic rise in the numbers of withholding allowances (not exemptions though) was something that the IRS, watching Mr. Stout as they were, could not have overlooked. We, therefore, quote from *U.S.* v. *Snider,* 502 F.2d 645 (4th Cir. 1974) as follows:

> In our view, these are cases of symbolic speech. *Id.* at 646.
>
> * * *
>
> This is especially true in light of the power of the IRS to treat a claim such as Snider's as constituting no information and withhold on the basis of zero dependents. IRS Reg. Sec. 31.3401(e)-1. *Id.* at 656.

The concern of the IRS is supposed to be exclusively the collection of taxes, isn't it?

CONCLUSION

Petitioner respectfully requests that his Petition for Writ of Certiorari be granted or, in the alternative, for this Court to exercise its supervisory jurisdiction by ordering the Court of Appeals to require an evidentiary hearing into the matters of the timing of the IRS summonses, the never filed affidavits of no electronic eavesdropping, and into the circumstances surrounding the "*in camera* submission No. 1."

Respectfully submitted,

PAUL STOUT

By: .....

SHELLY WAXMAN

APPENDIX

APPENDIX

AA-1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

PAUL R. STOUT

No. 77 CR 906 — Violation: Title 26, United States Code, Sections 7203 and 7205

The SPECIAL JUNE 1976 GRAND JURY charges:

During the calendar year 1973,

PAUL R. STOUT,

defendant herein, who was a resident of Lombard, Illinois, had and received a gross income of approximately $30,342.88; that by reason of such income he was required by law, following the close of calendar year 1973 and on or before April 15, 1974, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States;

In violation of Section 7203, Internal Revenue Code; Title 26, United States Code, Section 7203.

Misc. No. _____

U.S. Court of Appeals
Seventh Circuit – Docket

General No. 78-2225

Related Nos. _____

☐ Pet. Civil ☐ U.S. Civil ☐ Tax Court ☐ Orig. Petition
☐ Admin. Review ☐ Admin. Enforcement ☐ Bankruptcy ☒ Criminal

District N. Ill., East. Div. Filed in D.C. 09-21-77 Federal Prisoner ☐
Number 77-Cr-906 Notice of Appeal 09-25-78 State Prisoner ☐
Judge George N. Leighton Type Petition _____

Title:

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PAUL R. STOUT,
Defendant-Appellant.

Contents of Record Filed 9-25-78

Pleadings: _____ volumes.		
Transcripts: _____ volumes.	10/10/78	2v pldgs.
Depositions: _____ volumes.	11/6/78	12v trans.
Exhibits: _____	11/13/78	2v trans.
Other: short record		
_____		
Misc. _____		

Supplemental Records Contents

Record Withdrawal	Date	By Whom	Returned
2v pldgs., 14v trans.	1/31/79	Waxman	2/14/79
2v pldgs., 14v trans.	2/20/79	Solotorousky	3/16/79
3v pldgs. 3v trans.	6/18/79	LC	7/18/79
2v pldgs., 14v trans.	10/2/79	Sol. Gen.	

Summary Of Events

Docketed: 9-25-78
Docket Fee Filed: PAID 10/17/78 In Forma Pauperis ☐
Appendix: 2/14/79
Appellant's Brief: 2/14/79
Appellant's Brief: _____
Appellee's Brief: 3/16/79
Appellee's Brief _____
C.R. 10 ☐ Granted ☐ Denied ☐
Reply Brief: 4/3/79
Intervenor's Brief: _____
Amicus Curiae Brief: _____
Additional Authority: _____
Notice of Oral Arg.: 5/11/79

Briefs Distributed: MAY 21 1979
Date of Oral Arg: 6/5/79
Panel: Fell, Sprecher, Campbell
Opinion Date: 7/3/79 Sprecher.
Order Date: _____
Disposition: AFFIRMED
Petition For Rehearing: 7/17/79 dist. En Banc ☒
Granted ☐ Denied ☒ 8/10/79
Mandate Issued: _____
Record Returned: _____
Date Reinstated: _____
Reported At: _____ FTd _____